

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KATHERINE BERNHARDT,)
)
Plaintiff,) **Case No. 4:21-CV-00870**
)
v.) **JURY TRIAL DEMANDED**
)
CITY OF ST. LOUIS,)
)
Defendant.)

DEFENDANT CITY OF ST. LOUIS'S MOTION TO DISMISS

COMES NOW Defendant City of St. Louis (“City”), pursuant to Federal Rule of Civil Procedure 12(b)(6), and hereby requests this Court dismiss this action against it for failure to state a claim upon which relief may be granted, and in support thereof states as follows:

1. Plaintiff Katherine Bernhardt (“Plaintiff”) brings this six-count complaint against City after it painted over graffiti on her property in July 2020. (Doc. 1).
2. Specifically, Plaintiff brings four claims under 42 U.S.C. § 1983, alleging City’s graffiti ordinance (Ordinance 66934, codified as St. Louis, Mo. Mun. Code § 15.77.030, violates her First Amendment right to free speech and expressive conduct and her Fourteenth Amendment due process rights. Plaintiff also alleges that City’s action violated her rights under the Visual Arts Rights Act of 1990, and further alleges a Missouri state law claim for tortious injury to property.
3. Each of Plaintiff’s claims fails to state a claim for which relief may be granted.
4. City submits herewith a memorandum in support of its motion, which sets out the relevant arguments and citations to authority on which City relies.

WHEREFORE, City prays the Court grant its Motion to Dismiss with prejudice, and for any further relief the Court deems just and reasonable.

Respectfully submitted,
MATT MOAK
CITY COUNSELOR

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CERTIFICATE OF SERVICE

I hereby certify the foregoing was electronically filed on September 17, 2021, with the Court for service by means of Notice of Electronic Filing upon all attorneys of record.

/s/ Abby Duncan